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FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW, Room TW-A325
Washington, DC 20554

Re: *Ex Parte* Presentation in MB Docket No. 04-63 (Digital Output Protection Technology and Recording Method Certifications: TiVoGuard Digital Output Protection Technology)

Dear Ms. Dortch:

This letter, submitted on behalf of the Motion Picture Association of America, Inc., and its member companies (the "MPAA Parties"), is in response to the *ex parte* letter filed in the above-referenced docket by Public Knowledge on July 19. In the attachment to its letter, Public Knowledge contests the efficacy and need for proximity controls on four grounds. For the reasons stated below, the Commission should find that proximity controls are an effective means of providing security without being a burden, or even a recognized event, to the viewer.

First, Public Knowledge claims that Time-To-Live ("TTL") is ineffective as a proximity control. As the MPAA Parties stated in their recent white paper on issues raised by TiVoGuard, however, the proposal is not to use either TTL or RTT, but to use both in tandem. Thus the relevant question is not how TTL performs alone, but how it performs as a proximity control when used together with RTT.[1] When used in conjunction with RTT, TTL is an effective means of proximity control. In addition, unless a viewer is attempting to circumvent it, TTL provides a useful mechanism to help provide feedback to the consumer that they are attempting to redistribute content outside the home.

[1] *See* Letter from Bruce E. Boyden to Marlene H. Dortch, July 16, 2004, Attachment at 9 (the "White Paper").

Second, Public Knowledge argues that Round-Trip-Time ("RTT") is unreliable. Public Knowledge notes that many factors can influence the amount of time any particular round-trip will take, such that there is no guarantee that every round-trip-time will fall below a certain threshold. Again, as the MPAA Parties observed in the White Paper, this objection ignores what has actually been proposed. The RTT proximity control is not applied on a packet-by-packet basis; rather, the method proposed by the MPAA Parties and others requires that only one RTT measurement fall below the threshold value (usually 7 milliseconds) within a certain set period of time. This method is designed to account for the variability that Public Knowledge notes, yet still impose a limitation that rules out much redistribution over networks outside the geographic proximity of the device.

In support of its argument against RTT, Public Knowledge claims that "RTT between an Ethernet-connected laptop and our network printer on an all-wired network is consistently above 7 ms." This factual claim submitted by Public Knowledge should be dismissed by the Commission. First, implementation of RTT in this context is not intended to govern transmissions across an office network (which may not be functionally equivalent to a home network), so the fact that Public Knowledge allegedly cannot achieve an RTT of 7 milliseconds on its office network, even if true, is irrelevant. Similarly, Public Knowledge's office printer is unlikely to be a device that is capable of receiving content marked with the Broadcast Flag and thus is unlikely to contain any of the submitted technologies capable of RTT measurement. Second, and more importantly, Public Knowledge does not indicate how long it attempted to achieve an RTT of 7 milliseconds; as noted above, the relevant question is not whether *all* such attempts fall below that threshold, but whether *any* transmissions fall below that threshold in a given time period. Third, companies with far more experience in networking than Public Knowledge, and with a greater vested interest in not alienating their consumers, have agreed in these interim certification proceedings to implement the TTL and RTT proximity controls requested by the MPAA Parties.

Public Knowledge's third ground for objection is their repeated assertion that "[l]ive redistribution of . . . HD content is currently impossible." The Commission has already considered and rejected this argument in the Broadcast Flag Report and Order. Contemporaneous improvements in bandwidth, compression, and storage capacity are steadily eroding the basis of this claim. And as the Commission found, even if live streaming of high-definition content is not currently feasible, "technological steps must be taken now before the DTV transition matures any further" in order to ensure the viability of over-the-air television.[2] There is no reason to reconsider that conclusion here, when the Commission is considering technologies that will, if approved, be

[2] Report and Order and Further Notice of Proposed Rulemaking, *Digital Broadcast Content Protection*, MB Docket No. 02-230, ¶ 8 (rel. Nov. 4, 2003). Furthermore, it is not only high-definition, but standard-definition digital content that is at issue, as the Commission noted. *See id.*

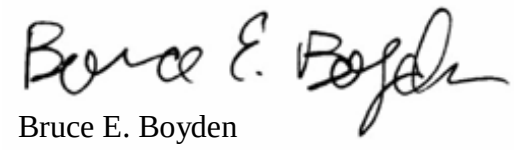
incorporated in consumer products for years or even decades to come. A misstep now could have far-reaching ramifications.

Finally, Public Knowledge claims that the fact that TiVoGuard is "upgradeable" should factor into the Commission's decision. As the MPAA Parties stated in their White Paper, the approval of TiVoGuard in its current form may inspire other technology providers to seek approval of technologies with similar reach, which may or may not be upgradeable. Furthermore, if TiVoGuard *is* (as is claimed) upgradeable, it should in that case be straightforward to enable remote access once there is an understanding as to the parameters of such access. In addition, approval of TiVoGuard in its current form would forestall attempts to define the proper controls necessary to implement remote access that are occurring in private cross-industry groups, such as the Digital Video Broadcasting Project ("DVB"), and before the Commission itself in other proceedings. The Commission may not later be able to undo its actions in these interim, fast-track proceedings.

In fact, the claim that TiVoGuard is upgradeable, if anything, cuts against taking precipitous action now, given that other groups, as well as the Commission itself, are in the early stages of consideration of the complex legal, technical, and policy issues raised by remote access. For example, the DVB, which includes over 260 multi-national technology and consumer electronics companies, software developers, content owners, broadcasters, and regulators, is currently considering the remote access issue in its Content Protection and Copy Management Group. The content production industry is also in discussions with the Digital Living Network Alliance (formerly known as the Digital Home Working Group) to define the content protection protocols and associated local proximity controls necessary to the development of the first version of their home networking specification into a version that supports networking of commercial entertainment content. In addition, a broad multi-industry working group is in the process of formation to explore technical aspects of remote access and technologies that might facilitate such access by users without opening the door to widespread unauthorized redistribution. These careful deliberative processes reflect the complex and important legal, business, and technology issues involved. They should not be short-circuited by government-approved deployment of incomplete, unilaterally defined solutions resulting from premature action by the Commission in an interim proceeding. The Commission should not take action now that will foreclose such discussion, particularly if TiVoGuard may simply be upgraded when the answers are resolved.

In accordance with Section 1.1206 of the Federal Communications Commission rules, one copy of this notice is being filed electronically.

Sincerely,



Bruce E. Boyden

cc: Catherine Bohigian
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Stacy Fuller
Jordan Goldstein
Johanna Shelton